

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	
	:	S2 17 Cr. 600 (NRB)
	:	
- v -	:	VERIFIED PETITION
	:	FOR ADJUDICATION OF
WILLIAM McFARLAND,	:	INTEREST PURSUANT
	:	TO 21 U.S.C. § 853(n)(3)
Defendant.	:	
	:	
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Petitioner First Western Trust Bank (“First Western”), by and through its undersigned counsel, alleges as follows pursuant to 21 U.S.C. § 853(n)(3) and Fed. R. Crim. P. 32.2(c):

1. This petition is submitted on behalf of petitioner First Western Trust Bank, 1900 16th Street, suite 1200, Denver, Colorado 80202.

2. On January 14, 2019, this Court entered an “Order of Forfeiture/Preliminary Order of Forfeiture As To Substitute Assets” of the defendant in this criminal action (the “Forfeiture Order”). The Forfeiture Order directed the United States to seize and hold certain properties, including “Any and all funds on deposit in Account Number XXXXX-2468 held in the name of Fyre Festival, L.L.C. at First Western Trust Bank and all funds traceable thereto” (Asset ID 19-FBI-002229)(the “Subject Asset”).

3. The Subject Asset was seized by the U.S. Department of Justice, pursuant to a letter from the United States Marshals Service for the Southern District of New York dated February 5, 2019. First Western Trust Bank issued a check for \$196,000 from account XXXXX-2468 held in the name of Fyre Festival, L.L.C. at First Western Trust to the U.S. Marshals

Service on February 6, 2019. *See Letter from United States Marshal Michael S. Case and Copy of Payment to U.S. Marshals Service*, attached as **Exhibit A**.

4. First Western did not have knowledge of or any involvement in the criminal conduct that gave rise to the forfeiture of the Subject Asset.

5. As fully set forth below, the Subject Asset is comprised of funds held in trust at First Western (the “Trust Account”) for the benefit of passengers on Fyre Festival, LLC charters who may have claims relating to the charters as required by the U. S. Department of Transportation (DOT). Those passengers are the beneficiaries of the trust for which First Western is trustee.

6. Fyre Festival, LLC was a public charter operator governed by DOT regulations set forth in 14 C.F.R. Part 380. The Trust Account at First Western was set up pursuant to those regulations to hold funds in trust to protect individual charter participants, who are the beneficiaries of the trust. 14 CFR § 380.34.

7. The Subject Asset was held at First Western pursuant to the Public Charter Operator’s Surety Trust Agreement effective April 20, 2017 and Public Charter Depository Agreement, appointing First Western as trustee. The rights and obligations of the parties are further set forth in the Certification of the Public Charter Operator, Direct Air Carrier, and Escrow Bank. *See documents establishing origin and nature of the Subject Asset*, attached as **Exhibit B**.

8. Upon establishment of the trust, the Subject Asset ceased to belong to any other party (e.g., Fyre Festival, LLC or defendant McFarland), and was held for the sole benefit of the beneficiaries. *See e.g. In re Ocana*, 151 B.R. 670, 673 (Bankr. S.D.N.Y. 1993). As

trustee, the bank has an ownership (albeit for the benefit of others) and fiduciary interest in the property.

9. The DOT requires that the charter participants receive notice of their right to make a claim against the charter operator or securer for money damages for failure faithfully to perform, fulfill, and carry out all contracts, agreements, and arrangements made by the Operator (which would be paid from funds held in the Trust Account) within 60 days after the charter.

10. As set forth in the attached letter from Anthony J. Sun, Assistant United States Attorney, the DOT believes that individual charter participants/beneficiaries of the Trust Account have not received the required notice to bring claims against the charter operator or securer. This process must be completed, and beneficiaries given the right to bring and fully resolve any claims. Further, there are likely complaints that were submitted directly to Fyre Festival, LLC by participants who may be entitled to reimbursement from the Subject Asset held by First Western. **Exhibit C.**

11. It is anticipated that all funds in the Trust Account will be required to be paid to beneficiaries on claims that will be submitted after notice is issued. Therefore, terminating the trust to forfeit funds is premature, and the Trust Account must remain intact for the benefit of the beneficiaries.

12. Upon information and belief, only upon issuance of proper notice as required by the DOT and resolution of all claims which may be made against the Subject Asset by beneficiaries will it be possible to determine if any funds remain which could become the property of Fyre Festival, LLC.

13. Pursuant to 21 U.S.C. § 853(n)(2), First Western respectfully requests a hearing to adjudicate its interests in the Subject Asset. Those interests in the Subject Asset should be exempt from forfeiture for the reasons stated below.

Prayer for Relief

WHEREFORE, the First Western Trust Bank respectfully requests a hearing on its interest in the Subject Asset and that the Court issue an order amending the Forfeiture Order to grant First Western its interest in the Subject Asset.

Dated: April 11, 2019

CURTIS, MALLET-PREVOST,
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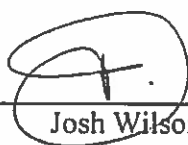
Attorneys for Petitioner First Western Trust Bank

VERIFICATION

I, on behalf of First Western Trust Bank, hereby verify, pursuant to 21 U.S.C. § 853(n)(3), that I have fully reviewed the foregoing petition and found that to the best of my knowledge its contents are truthful and accurate in all respects. I have fully reviewed declare under penalty of perjury that the foregoing information is true and correct.

First Western Trust Bank has retained the above- named counsel who has authority to represent it in this matter.

Dated: April 10, 2019
Denver, Colorado



Josh Wilson
Regional President
First Western Trust Bank